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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/725,540	10/03/96	BRASEL	K 2836-A

EXAMINER

18M1/0626

LAW DEPARTMENT  
IMMUNEX CORPORATION  
51 UNIVERSITY STREET  
SEATTLE WA 98101

ART UNIT	PAPER NUMBER
1816	4

DATE MAILED: 06/26/97

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

#### OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 0 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-19 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-19 are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

**Part III DETAILED ACTION**

***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

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Group I. Claims 1 -5, drawn to a method of enhancing an immune response to treat infectious disease, classified in Class 424, subclasses 85.1, and 204.1.

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Group II. Claims 1, 2, 6, and 7, drawn to a method of enhancing an immune response to treat cancer, classified in Class 424, subclass 277.1

Group III. Claims 1 and 18, drawn to a method of inducing tolerance, classified in Class 424, subclass 184.1.

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Group IV. Claims 8-11, drawn to a population of antigen-pulsed dendritic cells, classified in Class 435, subclass 372.

Group V. Claims 12-14, drawn to method of differentiating hematopoietic cells, classified in Class 435 , subclass 377.

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Group VI. Claim 15, drawn to a method of preparing antigen-specific T cells, classified in Class 435, subclass 372.3.

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Group VII. Claim 16, drawn to a method of enhancing vaccination, classified in Class 424, subclass 184.1

Group VIII. Claim 17, drawn to a vaccine adjuvant, classified in Class 424, subclass 278.1.

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Group IX. Claim 19, drawn to cell expansion media, classified in 435, subclass 431.

2. The inventions are distinct, each from the other because of the following reasons:

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3. Inventions IV and VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially

different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case, antigen-specific T cell can be prepared by culturing T cells with freshly prepared macrophages and antigen.

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4. Inventions VIII and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case, the adjuvant can be used to generate antibodies to flt3-L or c-kit.

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5. Inventions I, II, III, V, VI, and VII are unrelated methods. These inventions require different ingredients, process steps and endpoints to accomplish the use of enhancing an immune response, treating an infectious disease, treating cancer, preparing particular cell populations, inducing antigen-specific T cells, enhancing vaccination, and inducing tolerance. Therefore, they are patentably distinct.

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6. Inventions IV, VIII, and IX are different products. Cells, adjuvant, and expansion media are distinct because their structures and functions are different, which require non-coextensive searches. Therefore, they are patentably distinct.

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7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification in addition to their recognized divergent subject matter, and require different searches, restriction for examination purposes as indicated is proper.

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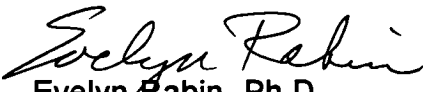
8. A telephone call was made to Stephen Malaska on June 4, 1997 to request an oral election to the above restriction requirement, but did not result in an election being made.

5 Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

10 9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

15 10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evelyn Rabin, Ph.D. whose telephone number is (703) 305-6811. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

20 11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached on (703) 308-3973. The FAX number for this Group is (703) 305-7939. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose  
25 telephone number is (703) 308-0196.

  
Evelyn Rabin, Ph.D.

June 20, 1997

  
CHRISTINA Y. CHAN  
SUPERVISORY PATENT EXAMINER  
GROUP 1800